

Message Text

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ACTION AF-08

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INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
USIA-06 HEW-04 EB-07 TRSE-00 COME-00 MC-02 ACDA-07
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TO SECSTATE WASHDC PRIORITY 751
INFO AMEMBASSY GABORONE
AMEMBASSY MASERU

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E.O. 11652: GDS
TAGS: SHUM, MASS, WZ
SUBJECT: CLEARANCE OF DRAFT HUMAN RIGHTS
OBSERVANCE REPORT

REF: STATE 301392

1. POST HAS FOLLOWING COMMENTS ON GOOD BASIC SUMMARY
OF SWAZILAND SITUATION IN PARA SEVEN REFTEL:
A. AS EDITORIAL MATTER, SUGGEST LAST SENTENCE IN SECOND
PARA OF SECTION ROMAN ONE BE REWORDED TO REFER TO "NEW
CONSTITUTION MORE COMPATIBLE WITH SWAZI TRADITION ETC."

B. REFERENCE TO JUDICIARY IN SECTION ROMAN TWO SHOULD BE
DRAWN FROM FOLLOWING. DUAL COURT SYSTEM PREVAILS:
TRADITIONAL COURTS (OFFICIALLY CALLED SWAZI COURTS) COMPRISE
COURTS OF FIRST INSTANCE, COURT OF APPEAL, AND HIGHER COURT
OF APPEAL; THESE COURTS DEAL MAINLY WITH TRADITIONAL MATTERS,
INCLUDING FAMILY MATTERS. REGULAR COURT SYSTEM COMPRISES
MAGISTRATE COURTS (ONE FOR EACH OF COUNTRY'S FOUR DISTRICTS),
ONE-MAN HIGH COURT, AND MULTI-JUDGE COURT OF APPEAL PRESIDED
OVER BY JUDGE-PRESIDENT; LATTER COURT MANNED BY DISTINGUISHED
LAWYERS WHO HAVE SERVED ON BENCH IN SOUTH AFRICA AND CONVENES
ONLY WHEN NECESSARY. AS INDICATED REFTEL, ALL JUDGES
APPOINTED BY KING.

C. AS FOR "ABSENCE OF LEGAL SAFEGUARDS" MENTIONED
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SEVERAL PLACES IN PARA SEVEN, DEPUTY ATTORNEY GENERAL

TOLD EMBOFF DECEMBER 13 (IN CONTEXT OF WIDE-RANGING DISCUSSION OF SWAZI LEGAL PROCEDURES) THAT "ALTHOUGH CONSTITUTION IS REPEALED, RIGHTS AND FREEDOMS OF INDIVIDUALS ARE PROTECTED IN ABOUT SAME WAY AS UNDER ENGLISH COMMON LAW." HE STRESSED THAT, LIKE ENGLISH COMMON LAW, ROMAN-DUTCH LAW IS "MAINLY UNWRITTEN" AND IS EFFECTIVE EVEN IN FACE OF REPEAL OF CONSTITUTION. HE ADDED THAT UNDER CURRENT EMERGENCY POWERS, HOWEVER, PERSONS ENGAGING IN BANNED POLITICAL ACTIVITY CAN BE HELD FOR UP TO SIX RPT SIX MONTHS (RENEWABLE). TO BEST OF EMBASSY'S KNOWLEDGE THIS AUTHORITY HAS NOT BEEN ABUSED.

2. ON BASIS LOCAL OBSERVATIONS, POST ASSOCIATES SELF WITH ASSESSMENT QUOTED IN PENULTIMATE SENTENCE OF REFTEL TO EFFECT THAT "SWAZILAND HAS ALWAYS BEEN REGARDED AS ONE OF THE MOST ENLIGHTENED COUNTRIES IN AFRICA IN TERMS OF CIVIL RIGHTS AND RACE RELATIONS." WACHOB

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